

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Proposals for a New FM Radio Broadcast Class C4) MB Docket No. 18-184
and to Modify the Requirements for Designating)
Short-Spaced Assignments)

NOTICE OF INQUIRY

Adopted: June 4, 2018

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Comment Date: [30 days after date of publication]

Reply Comment Date: [60 days after date of publication]

By the Commission:

I. INTRODUCTION

1. In this Notice of Inquiry (NOI), we explore the possibility of amending Part 73 of the Commission's rules (Rules)¹ to create an intermediate class of FM broadcast stations in Zone II between Class A and Class C3, to be designated Class C4. We also explore the possibility of establishing a procedure whereby an FM station in the non-reserved band (Channels 221-300), regardless of Zone or station class, could be designated as a Section 73.215 facility, resulting in such station receiving interference protection based on its actual authorized operating parameters rather than the maximum permitted parameters for its station class.²

II. BACKGROUND

A. Class C4 Proposal

2. **FM Zones and Classes.** For FM station classification purposes, the United States is divided into three zones: I, I-A, and II.³ Zones I and I-A represent areas of greater population density.⁴ Each FM facility is classified on the basis of the zone in which its transmitter is located, its transmitter power, and its effective antenna height.⁵ There are currently eight classes of FM broadcast stations: A, B1, B, C3, C2, C1, C0 and C. Class B and B1 stations are assigned only in Zones I and I-A, whereas Class C3, C2, C1, C0 and C stations are assigned only in Zone II. Class A FM stations are assigned in all three zones. Each FM class has a minimum power requirement and a maximum power limit, which are set out in Section 73.211 of the Rules.⁶ Stations and vacant allotments in each class are afforded protection from interference from other FM stations on the same channel and adjacent channels by means

¹ 47 CFR Part 73.

² Petition at 11-12; 47 CFR § 73.215.

³ 47 CFR § 73.205.

⁴ Zone I is a large area in the northeastern portion of the United States, containing the District of Columbia, the states of Indiana, Illinois, Pennsylvania, Ohio, West Virginia, Maryland, Delaware, New Jersey, Rhode Island, Massachusetts, Connecticut, and portions of Michigan, Wisconsin, New York, Maine, New Hampshire, Vermont and Virginia. Zone I-A contains Puerto Rico, the U.S. Virgin Islands, and all but the northernmost portion of California. Zone II contains Alaska, Hawaii, and the rest of the continental United States not in Zones I and I-A.

⁵ 47 CFR § 73.210.

⁶ 47 CFR § 73.211.

of required distance separations, which are set out in Section 73.207 of the Rules.⁷ This regulatory framework is intended to enable broadcast services to function effectively and improve efficiency in the allotment, licensing, and use of the electromagnetic spectrum.

3. **Secondary services.** In 2000, the Commission authorized low power FM (LPFM) stations to “fill the gaps in the spectrum that would otherwise go unused.”⁸ Similarly, FM translator stations are intended to provide “supplementary service to areas in which direct reception of [full service] stations is unsatisfactory due to distance or intervening terrain barriers.”⁹ To ensure the integrity of existing FM full power stations, the Commission authorizes both LPFM and FM translator stations as secondary services, meaning, generally speaking, that they are subject to service-specific rules restricting their operations and interference caused to other stations.¹⁰

4. **Previous new FM classes.** In 1983, the Commission made a number of changes to the FM system of allotments, including the establishment of three intermediate classes of stations: B1, C1, and C2.¹¹ The Commission’s purpose in adding these station classes was to minimize overprotection of stations and thereby increase the availability of FM station assignments.¹² To implement the new classes, existing Class B and C stations were required to file for modification to meet the minimum facility requirements for their class within three years or be reclassified based on their actual operating facilities.¹³ In 1989, the Commission provided further opportunities for Class A stations to expand their coverage areas by creating a new class, Class C3.¹⁴ Noting that many stations could avoid reclassification by simply increasing power to meet the minimum required for their station class, the Commission followed the same basic reclassification procedure as for Classes B1, C1, and C2, and provided two years for stations to file for modification to meet the minimum facility requirements for their class or be reclassified based on their actual operating facilities.¹⁵

5. In 2000, the Commission created another class of FM station, Class C0.¹⁶ The Commission explained that approximately 60 percent of Class C stations in the non-reserved band were operating with antenna heights above average terrain (HAAT) of between 300 and 450 meters,

⁷ 47 CFR § 73.207.

⁸ *Creation of Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19236 (2000).

⁹ *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7232 (1990).

¹⁰ See, e.g., 47 CFR § 74.1203; 47 CFR § 73.809.

¹¹ *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, Report and Order, 94 FCC 2d 152, 155-56 (1983) (*1983 FM Allotment Order*), modified, Memorandum Opinion and Order, 97 FCC 2d 279 (1984) (*1984 Reconsideration Order*).

¹² *1984 Reconsideration Order*, 97 FCC 2d at 281 (“[A] significant number of Class B and C stations were operating with facilities that were substantially below those permitted by the rules. Nevertheless, the Commission’s spacing requirements protected those stations to the same extent as a full facility licensee. The result of protecting all Class B and C stations at the maximum facility level was the preclusion of new, otherwise permissible services.”).

¹³ *1983 FM Allotment Order*, 94 FCC 2d at 154-56, 176-78.

¹⁴ *Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations*, First Report and Order, 4 FCC Rcd 2792 (1989) (*Class C3 Order*).

¹⁵ *Id.* at 2794.

¹⁶ *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 21649 (2000) (*Class C0 Order*).

significantly less than the class maximum of 600 meters.¹⁷ The Commission's minimum distance separation requirements, however, protected all Class C stations from interference as if they were operating at the class maximum of 600 meters.¹⁸ Accordingly, the Commission created a new class, Class C0, with a minimum HAAT of 300 meters and a maximum HAAT of 450 meters, and increased the minimum HAAT for Class C stations from 300 meters to 451 meters.¹⁹ While acknowledging that interference-free service provided by Class C stations operating below maximum HAAT was "entitled to some weight in our public interest determination," the Commission prioritized spectrum efficiency by downgrading certain Class C stations operating below maximum HAAT, thereby "making available this underutilized spectrum on a demand basis for competing broadcast uses."²⁰ In light of the "disruption entailed in the downgrade of approximately 60 percent of all present Class C FM stations" to Class C0, the Commission rejected blanket reclassification in favor of a case-by-case show cause procedure whereby Class C stations that fail to meet the revised minimum Class C requirements are reclassified only when "a specific, conflicting demand for the spectrum is expressed" (i.e., a "triggering" application for a construction permit or petition for rulemaking to amend the FM Table of Allotments is filed that requires the downgrading of the affected Class C station but satisfies the less restrictive Class C0 spacing requirements).²¹ Under this procedure, triggering applications must certify that no alternative channel is available for the proposed service.²² If the staff concludes that a triggering application is acceptable for filing, it will issue an order to show cause why the affected Class C station should not be reclassified as a Class C0 station.²³ The affected Class C station has the opportunity to preserve its Class C status by filing an acceptable construction permit application to increase its antenna HAAT to at least 451 meters, the Class C minimum HAAT.²⁴ If the construction is not completed as authorized, the subject Class C station is reclassified automatically as a Class C0 station.²⁵ This tailored approach was intended to bring new and expanded service to listeners without unnecessary disruption to existing Class C stations.²⁶ As a practical matter, however, the history of the Class C0 show cause procedure has frequently been marked by contentious proceedings and delayed construction.²⁷

6. **SSR proposal.** This proceeding was initiated by a petition for rulemaking filed by SSR Communications, Inc. (SSR) on January 22, 2013.²⁸ SSR advocates modifying Part 73 of the

¹⁷ See *id.* at 21655-56.

¹⁸ See *id.*

¹⁹ See *id.* at 2165-56, 21680.

²⁰ See *id.* at 21658-59.

²¹ *Id.* at 21650, 21662.

²² 47 CFR § 73.3573, Note 4. Available alternative frequencies are limited to frequencies that the proposed service could use at the specified antenna location in full compliance with the distance separation requirements of Section 73.207, without any other changes to nearby FM stations and/or the FM Table of Allotments. *Id.*

²³ See *id.*

²⁴ *Class C0 Order*, 15 FCC Rcd at 21650, 21656; 47 CFR § 73.3573, Note 4.

²⁵ 47 CFR § 73.3573, Note 4.

²⁶ *Class C0 Order*, 15 FCC Rcd at 21656-57.

²⁷ See, e.g., *Peter Gutmann, Esq.*, Letter, 29 FCC Rcd 4103 (MB 2014); *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153 (2011). In such cases, we have observed that the multi-step process required for Class C0 reclassification provides ample opportunity for the affected station to delay reclassification. See, e.g., *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (St. Simons Island, Georgia) Reclassification of License of Station WOGK(FM), Ocala, Florida*, Report and Order, 21 FCC Rcd 1132 (MB 2006).

²⁸ On July 18, 2014, the Petition was placed on public notice (RM-11727). *Consumer and Governmental Affairs Bureau, Reference Information Center, Petition for Rulemaking Filed*, Public Notice, Report No. 3007 (CGB July 18, 2014). On August 14, 2014, the Media Bureau extended the deadline for filing comments in the proceeding.

Commission's Rules to create a new Zone II FM station class (Class C4) with an effective radiated power (ERP) that must exceed 6 kilowatts, a maximum ERP of 12 kilowatts, and a reference HAAT of 100 meters. The ERP that Class C3 stations must exceed would increase from 6 kilowatts to 12 kilowatts, but the maximum ERP would remain at 25 kilowatts. In addition, under the current rules, a station can operate below the minimum ERP for its class provided its HAAT allows it to exceed the class contour distance for the next lower class (for example, a Class C3 station must exceed the Class A contour distance of 28 kilometers).²⁹ Under the SSR proposal, the next lower class for a Class C3 station would be Class C4, with a contour distance of 33 kilometers. SSR proposes amending Sections 73.207(b)(1), 73.210(a), 73.210(b), 73.211(a)(1), 73.211(b), and 73.215(e) of the Rules to implement these changes.

7. **Estimated impact.** SSR argues that creation of a new Class C4 would provide an upgrade opportunity to “hundreds of Class A facilities” and improve radio service to “millions of potential listeners.”³⁰ SSR claims that minority owners, in particular, would benefit from the new classification.³¹ Finally, SSR notes that the proposal would provide consistent, approximately 3 dB ERP intervals between each FM class (currently there is an approximately 6 dB ERP interval between Class A and Class C3).³² Commission staff estimates that 127 Class C3 stations, or 14 percent of the total number of Class C3 stations, are operating with facilities that are less than the proposed Class C3 minimums and thus could be subject to reclassification to Class C4.³³

B. Section 73.215 Proposal

8. **Section 73.215.** In 1962, the Section 73.207 distance separation rules were adopted as the “best means for achieving an orderly, efficient, and effective development of the commercial FM broadcast service.”³⁴ In 1989, the Commission adopted Section 73.215, which specifies a procedure by which an applicant may obtain relief from the historically strict enforcement of the Section 73.207 distance separation requirements.³⁵ Section 73.215 permits an applicant to propose a short-spaced transmitter site—i.e., one that does not meet the minimum distance separation requirements of Section 73.207.³⁶ Under Section 73.215, an applicant need only demonstrate that the proposal would not result in prohibited contour overlap and that the short-spacing meets the less restrictive spacing requirements of

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Deadline Extended for Comment on SSR Communications, Inc.'s Petition for Rulemaking to Amend the Commission's Rules Governing FM Broadcast Stations, Public Notice, 29 FCC Rcd 9679 (MB Aug. 14, 2014). A List of Commenters is included at Appendix. Commenters generally supported SSR's proposals, although some, including the National Association of Broadcasters (NAB), expressed concerns over potential interference with FM translators.

²⁹ 47 CFR § 73.211(a)(3).

³⁰ Petition at 5-6.

³¹ *Id.* at 6.

³² *Id.* at 5.

³³ To obtain this estimate, the staff used the Commission's CDBS database to determine the average distance to the 60 dBu contour for all licensed Class C3 stations, using the licensed effective radiated power and antenna height above average terrain for each station and the methods described in 47 CFR § 73.313. Any station with a 60 dBu contour distance that does not exceed 33 kilometers is included in the total.

³⁴ 47 CFR § 73.207; *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Notice of Proposed Rulemaking and Order, 13 FCC Rcd 14849, 14860 (1998) (citing *Greater Media, Inc.*, 59 FCC 2d 796, 797 (1976); *ECI License Company, L.P.*, Memorandum Opinion and Order, 11 FCC Rcd 3545, 3546 (1996)) (*Class C0 NPRM*). The Commission has long held that “strict enforcement of the mileage separation rules is of paramount importance to the integrity of the entire FM assignment plan.” *Class C0 NPRM*, 13 FCC Rcd at 14860 (citing *Boone Biblical College*, 19 FCC 2d 155, 156 (1969)).

³⁵ See *Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, Report and Order, 4 FCC Rcd 1681, 1682 (1989).

³⁶ *Class C0 NPRM*, 11 FCC Rcd at 14860-61.

Section 73.215(e). While fully-spaced facilities are protected to the same extent as a station operating at the hypothetical maximum ERP and HAAT for its class, facilities that have requested processing under Section 73.215 are protected based on their actual predicted contours.³⁷

9. **SSR proposal.** SSR argues that, by providing interference protection to a station's contours based on maximum class facilities, as opposed to the actual facilities, the Commission's rules overprotect stations operating with facilities below their class maximum. Accordingly, SSR proposes an amendment to Section 73.3573 of the Rules³⁸ that would require such "sub-maximum" stations to be designated as Section 73.215 facilities using a procedure similar to the existing Class C0 show cause and reclassification procedure. Designation as a Section 73.215 facility would result in the sub-maximum station receiving interference protection based on its actual authorized operating parameters rather than the maximum permitted parameters for its station class. Under SSR's proposed procedure, stations not already authorized under Section 73.215 that, for ten years prior to the filing of a triggering application, have continuously operated with a HAAT or ERP below that of the class maximum (or equivalent class maximum HAAT and ERP combination in the case of station operating with a HAAT exceeding its reference HAAT) would be given an opportunity to upgrade to maximum class facilities or be subject to designation as a Section 73.215 facility.³⁹

10. SSR recommends a show cause procedure to implement its Section 73.215 proposal. Specifically, the procedure would be initiated by the filing of a "triggering" application that specifies facilities that require the designation of the affected sub-maximum station as a Section 73.215 facility. Triggering applications may utilize Section 73.215 and must certify that no alternative channel is available for the proposed service.⁴⁰ Copies of a triggering application and related pleadings would be required to be served on the licensee of the affected sub-maximum station. If the staff concludes that a triggering application is acceptable for filing, it would issue an order to show cause why the affected sub-maximum station should not be designated as a Section 73.215 station. The order to show cause would provide the licensee of the sub-maximum station 30 days to express in writing an intention to seek authority to modify its technical facilities to its maximum class HAAT and ERP (or equivalent combination thereof) or to otherwise challenge the triggering application. If no such intention is expressed and the triggering application is not challenged, the affected sub-maximum station would be designated as a Section 73.215 station and processing of the triggering application would be completed. If such intention is expressed within the 30-day period, an additional 180-day period would be provided during which the licensee of the sub-maximum station would be required to file an acceptable construction permit application to increase HAAT and/or ERP to its class maximum values (or equivalent combination thereof). Upon grant of such a construction permit application, the triggering application would be dismissed. As with Class C0 reclassifications, the licensee of the sub-maximum station would be required to serve on triggering applicants copies of any FAA submissions related to the application grant process. If the construction is not completed as authorized, the affected sub-maximum station would be automatically designated as a Section 73.215 facility.

III. DISCUSSION

11. By this NOI, we seek comment on SSR's proposals and the related issues outlined herein.⁴¹ In considering the addition of a new class of FM station or a significant alteration of the protections provided to existing FM stations, the Commission generally has weighed any demonstrated need for additional outlets or improved service against the effects such changes would have on the present FM

³⁷ 47 CFR § 73.215(a).

³⁸ 47 CFR § 73.3573.

³⁹ Petition at 11-12.

⁴⁰ See *supra* note 22 (defining available alternative frequencies).

⁴¹ 47 CFR § 1.407.

service.⁴² Likewise, we consider the interrelationships between the various services when carrying out our statutory mandate to provide a nationwide “fair, efficient, and equitable distribution of radio service.”⁴³ With these principles in mind, we seek comment on each of SSR’s proposals, as follows.

A. Class C4 Proposal

12. We invite comment generally on SSR’s proposal, described in detail above, to create an additional intermediate class of FM broadcast stations in Zone II between Class A and Class C3, to be designated Class C4, including the costs and benefits of such proposal. In accordance with our statutory mandate and precedent concerning a “fair, efficient, and equitable distribution of radio service,”⁴⁴ we will evaluate the proposal based on the general factors listed below. In particular, we seek comment on the following issues:

13. *Affected stations and their listeners.* Would the creation of a Class C4 materially benefit existing Class A stations by providing them with an opportunity to upgrade that is not possible today based on the current Class C3 parameters? Would Class A stations and their listeners, particularly in rural or underserved areas, benefit from the new Class C4? Is there a significant demand for the rule changes proposed by SSR? How many stations are likely to be affected by such a rule change? As suggested by SSR, would the creation of a Class C4 be particularly beneficial for minority-owned Class A stations by providing them with an opportunity to upgrade?⁴⁵ Would this action encourage diversity of ownership in the FM broadcast industry? Would there be a detrimental effect on existing stations and/or their listeners generally, either from increased interference or reclassification (upgrade or downgrade)?

14. *Secondary services.* Since the last new class of full power FM stations was added (Class C0 in 2000), there has been a significant increase in the number of FM translator and LPFM stations. These secondary stations are not entitled to interference protection from full power stations.⁴⁶ In addition, FM translators and LPFM stations are subject to differing remediation obligations with regard to interference caused to full power stations.⁴⁷ How would a new Class C4 affect secondary services, as well as AM primary stations that rebroadcast on FM translator stations? Are there lawful ways to mitigate or eliminate the impact of this proposal on secondary services, and, if so, what measures would be effective or appropriate? To what extent, if any, does the Local Community Radio Act of 2010 (LCRA)⁴⁸ impact our ability to protect existing FM translator and LPFM stations? In particular, would such protections be consistent with the LCRA directive that the “Federal Communications Commission, when licensing new FM translators, FM booster stations, and low-power FM stations ... ensure ... that (3) [these stations] remain equal in status and secondary to existing and modified full-service FM stations.”⁴⁹ In this respect, we note that we would be reluctant to adopt any proposal in this area that would have a significantly negative impact on FM translators and LPFM stations.

15. *Allocation goals.* Given the maturity of the FM service, would an increased density of signals resulting from Class A stations upgrading to Class C4 provide improved FM service coverage, or merely contribute to a higher “noise floor” overall while only modestly benefiting individual stations?

⁴² 1983 FM Allotment Order, 94 FCC 2d at 158.

⁴³ *Id.*; 47 U.S.C. § 307(b).

⁴⁴ 47 U.S.C. § 307(b).

⁴⁵ Petition at 6.

⁴⁶ See, e.g., Amendment of Part 74 of the FM Commission's Rules Concerning Translator Stations, Report and Order, 5 FCC Rcd 7212 (1990), para. 130. *Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2231 (2000), para. 65.

⁴⁷ Compare 47 CFR § 74.1203 (FM translators) with 47 CFR §§ 73.809 and 73.810 (LPFM).

⁴⁸ Pub. L. No. 111-371, 124 Stat. 4072 (2011).

⁴⁹ LCRA § 5(c).

Would upgrades to Class C4 increase the overall number of radio stations available to listeners or create interference that would degrade reception for stations in areas where there is currently a listenable signal, resulting in fewer listening choices for listeners? More generally, is there a “tipping point” at which increasingly granular station classifications are no longer conducive to efficient signal coverage and, if so, has that point been reached?

16. *Implementation procedures.* What is the appropriate balance of interests between the anticipated benefit of creating a new class of FM stations and the disruption entailed in the reclassification of existing stations? If a new class is created, should the Commission implement a blanket reclassification process, as it did in 1983 and 1989, by requiring existing Class C3 stations to file for modification to meet the proposed revised minimum facility requirements for Class C3 stations within a set time frame or be reclassified based on their actual operating facilities?⁵⁰ Should the mere filing for a modification be sufficient to avoid reclassification or should we also require construction to be completed by a date certain?⁵¹ If a date certain is set for filing a modification or completing construction, what would be a reasonable amount of time for licensees to comply?⁵² Would a blanket reclassification provide more reliable and timely opportunities for upgrade than the show cause procedure outlined in the next paragraph?

17. Alternatively, should the Commission adopt a show cause procedure similar to that currently in use for Class C0, whereby a Class C3 station operating below the proposed revised minimum facility requirements for Class C3 stations would be reclassified only after the filing of a “triggering” application that requires it to be reclassified to Class C4?⁵³ Should the affected Class C3 station have the opportunity to preserve its Class C3 status by filing a construction permit application to upgrade its facility to meet Class C3 minimums? We note above that the Commission’s licensing staff has found that the Class C0 show cause procedure appears to incentivize delay and contention between the parties. Have licensees experienced delay or other difficulties using the Class C0 show cause procedure? Is the blanket reclassification process described in the preceding paragraph preferable for that reason? Are there other implementation approaches the Commission should consider that might address or avoid problems identified with this show cause procedure?

18. *Other issues.* To what extent, if any, does the Local Community Radio Act of 2010 (LCRA)⁵⁴ impact our creation of a new class of FM stations or reclassification of existing FM stations; in particular, the provision that the Commission “shall not amend its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation requirements in effect on [January 4, 2011] between--(A) low-power FM stations; and (B) full-service FM stations”?⁵⁵ Are there specific rule changes that would be necessary or advisable to implement any of the foregoing proposals? We invite commenters to make suggestions as to how the Commission’s forms and databases should be modified to implement the above proposals.

⁵⁰ See *supra* para. 4.

⁵¹ See *1983 FM Allotment Order*, 94 FCC 2d at 178 (“[L]icensees can protect their classification merely by filing an application to upgrade their facilities. It is not necessary that the application be granted or the construction be completed by the deadline date.”).

⁵² Compare *1983 FM Allotment Order*, 94 FCC 2d at 177-78 (providing three years for stations to file for modification for appropriate minimum facilities) with *Class C3 Order*, 4 FCC Rcd at 2793-94 (providing two years rather than three years to file for a modification because Class C2 licensees could avoid reclassification by simply increasing power, which did not require a taller tower or finding a new antenna site).

⁵³ See *supra* para. 5.

⁵⁴ Pub. L. No. 111-371, 124 Stat. 4072 (2011).

⁵⁵ LCRA § 3(b)(1).

B. Section 73.215 Proposal

19. We invite comment generally on SSR's proposal, described in detail above, to create a procedure whereby an FM station in the non-reserved band (Channels 221-300), regardless of Zone or station class, could be designated as a Section 73.215 facility, resulting in interference protection based on actual authorized operating parameters rather than class maximums, if it has continuously operated with an ERP or HAAT below its class maximum for ten years.⁵⁶ This proposal raises issues similar to those posed by the Class C4 proposal, and we seek comment generally on the costs and benefits of this proposal. In particular, we seek comment on the following issues:

20. *Affected stations and their listeners.* Would the proposed Section 73.215 mechanism materially benefit stations seeking to upgrade and their listeners? What is the demand for such upgrades? Would there be a corresponding detrimental effect on listeners regarding loss of existing interference-free service provided by sub-maximum stations? The Commission has explained that its policy of protecting all stations as if they are operating at maximum permitted height or power for their class, even if they are in fact operating at or near the minimum permitted height and power for their class, "permits stations to improve technical facilities over time and provides a certain degree of flexibility for transmitter relocations."⁵⁷ To what extent would adoption of the Section 73.215 proposal undermine this policy? Is this policy still desirable in the mature FM service? What are the relevant factors that might affect the sub-maximum station's ability to upgrade to the class maximums, and have those factors changed due to technological or other developments? If a station has operated below maximum facilities for a sufficient period of time, can we conclude that the station is either unwilling or unable to operate at maximum facilities, thereby justifying protecting such station based on actual operating parameters and allowing for more efficient utilization of FM spectrum? Is ten years of continuous "sub-maximum" operation the appropriate period of time before a station would be subject to involuntary Section 73.215 designation, as suggested by SSR, or is another period of time appropriate? To what extent should transfers of control or assignments of licensees impact the relevant time period? That is, should the time period apply per station or per licensee? For example, if the relevant time period is ten years and a station that has operated below class maximums for nine years is transferred or assigned to a third-party, should the new licensee have ten additional years to upgrade to class maximums free from potential designation as a Section 73.215 facility?

21. *Secondary services.* As mentioned in Section III.A.14, *supra*, we are concerned with any adverse effects SSR's proposals may have on FM translators and LPFM stations. Therefore, we seek comment on the likely impact of full service station upgrades using the proposed Section 73.215 procedure on nearby secondary services or AM primary stations that rebroadcast on FM translator stations. Are there lawful ways to mitigate or eliminate the impact of this proposal on secondary services, and, if so, what measures would be effective or appropriate? In this respect, we note again that we would be reluctant to adopt any proposal in this area that would have a significantly negative impact on FM translators and LPFM stations.

22. *Allocation goals.* Would SSR's Section 73.215 proposal, if adopted, result in interference as described in Section III.A.14, *supra*? In particular, would the increased density of signals resulting from upgraded stations provide improved FM service coverage, or merely contribute to a higher "noise floor" overall while only modestly benefiting individual stations? Is this proposal in tension with the original purpose of Section 73.215 to afford applicants greater flexibility in the selection of transmitter sites?⁵⁸ Should the Commission significantly expand the applicability of Section 73.215 as proposed by

⁵⁶ We note that a station operating below its maximum ERP could still be operating at maximum facilities if its antenna HAAT allows it to meet the maximum contour distance for its station class. 47 CFR § 73.211(b)(2). Such station is not a sub-maximum station under the proposal here. Petition at 11-12.

⁵⁷ *Thunderbolt Broadcasting Co., Memorandum Opinion and Order*, 13 FCC Rcd 6959, 6962 (1998).

⁵⁸ *See Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, Memorandum Opinion and Order, 6 FCC Rcd 5356, 5356 (1991) ("The purpose of this

SSR, and what would be the policy and legal justifications for doing so? Does the Commission's long history of licensing thousands of stations in the reserved band—using a contour methodology based on stations' authorized facilities—show that expanding eligibility for Section 73.215 processing would result in increased or decreased services for listeners?

23. *Implementation procedures.* If the Section 73.215 proposal is adopted, should we follow SSR's suggested procedures, which are based on those currently in use for Class C0?⁵⁹ Should the triggering applicant be required to certify that no alternative channel is available for the proposed service?⁶⁰ Should we use a show cause procedure, and if so, what deadlines would be appropriate?

24. Alternatively, should the Commission adopt a more streamlined procedure whereby all sub-maximum stations would be provided a date certain by which they must file an upgrade application or automatically become subject to immediate designation as a Section 73.215 facility upon the filing of an acceptable application from another licensee seeking to upgrade its facilities? What would be a reasonable amount of time to allow sub-maximum stations to file upgrade applications before becoming subject to automatic designation as a Section 73.215 facility? Would such a procedure avoid unnecessary delays in providing new FM service and incentivize more stations to upgrade to their class maximums? Would there be any disadvantages with this approach? Are there other streamlined implementation approaches the Commission should consider?

25. *Other issues.* We invite comment on other details of SSR's Section 73.215 proposal. Which applicants should be permitted to use the proposed Section 73.215 procedure? Does "sub-maximum" include all stations operating at less than class maximums, or should we establish a cutoff whereby a station would not be subject to designation as a Section 73.215 facility if it operates at a minimal distance below its class maximum contour distance, such as two kilometers? How would the proposal affect stations that are short-spaced under Section 73.213 of the Rules?⁶¹

26. Are there specific rule changes that would be necessary to implement the proposal? We also invite commenters to make suggestions as to how the Commission's forms and databases should be modified to implement the Section 73.215 proposal.

IV. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

27. The proceeding this *NOI* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her

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proceeding was to consider technical methods by which FM station licensees could be afforded greater flexibility in the selection of antenna sites.").

⁵⁹ See *supra* para. 10.

⁶⁰ See *supra* note 22.

⁶¹ See 47 CFR § 73.213.

⁶² 47 CFR §§ 1.1200 *et seq.*

prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Section 1.1206(b) of the Rules.⁶³ In proceedings governed by Section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf).⁶⁴ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Filing Procedures

28. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,⁶⁵ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁶⁶

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

29. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

30. Availability of Documents. Comments and reply comments will be publically available online via ECFS.⁶⁷ These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

⁶³ 47 CFR § 1.1206(b).

⁶⁴ 47 CFR § 1.49(f).

⁶⁵ See 47 CFR §§ 1.415, 1419.

⁶⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Consistent with current practice, if we adopt the Section 73.215 proposal, we intend to rely on licensing records available in CDBS to determine the amount of time a "sub-maximum" station has been operating below class maximums.

⁶⁷ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

31. Additional Information. For additional information on this proceeding, contact Christine Goepp, christine.goepp@fcc.gov, of the Media Bureau, Audio Division, at (202) 418-7834, or Rodolfo Bonacci, rodolfo.bonacci@fcc.gov, of the Media Bureau, Audio Division, at (202) 418-2722.

V. ORDERING CLAUSES

32. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this Notice of Inquiry **IS ADOPTED.**

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX**List of Commenters**

Multicultural Media, Telecom and Internet Council
Cohen, Dippell and Everist, P.C.
T.Z. Sawyer Technical Consultants, LLC
SSR Communications, Inc.
The Cromwell Group
REC Networks
WXHC 101.5 FM
Sellmeyer Engineering
Magnum Communications, Inc.
Jeff Sibert
Mary Reynolds
WKLG, Inc.
Peter Schartel
Philip Lizotte
WOLF Radio, Inc.
Association of Federal Communications Consulting Engineers
Bootstrap Broadcasting, LLC
James P. Wagner
Mark Jones
Positive Peak Radio
Dylan Benefield
First Natchez Radio Group
Jerry Chapman
Carl Haynes
Joseph Episcopo
Flagler Broadcasting, LLC
Grant County Broadcasters
Houston Pearce
Hundley Batts
Kevin Wagner
Denny Benne
Robert R. Hawkins
Bob Cole
Jeff Murphy
Alan L. Button
Jon Thompson
Linda Hamlin Russin
Lee Anderson
Robert Fuller
Falls Media, LLC
Leonard Oswald
Patrick McBride
Merv Lawson
OJ Jackson
Greg Shapiro
Ernesto Garcia
Eugene Halama
David Mance
Gulf Coast Broadcasting Co Inc
Jennifer Finnerty

Birdie Holley
KREV-LP 104.7 FM
Jerry Lousteau
William J Wolfenbarger
Technical Services Group, Inc.
Roger Moyer
Leigh Ellis
JJ Fabini
Little Falls Radio Corporation
Chris Grams
Ville Platte Broadcasting Com.
Clarke Broadcasting Corporation
Roger Harris
Alex DeMers
Radio & Investments, Inc.
Adams Radio of Las Cruces
JWBP Broadcasting, LLC
Threshold Communications
Batesville Broadcasting Company, Inc.
Michael J. Dudding
Vision Communications, Incorporated
James A Turvaville
Blackbelt Broadcasting Inc.
Jim McDermott
Ron Stone
Jeff Fuller
Bill Coleman
Metro North Communications, Incorporated
iHeart Communications, Inc.
National Association of Broadcasters (NAB)
Beasley Broadcast Group, Inc., *et al*
Jackson Radio Works, Inc.